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EXAMINER
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STINSON, FRANKIE L

ART UNIT	PAPER NUMBER
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1792

NOTIFICATION DATE	DELIVERY MODE
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01/05/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,005	<b>Applicant(s)</b> OH ET AL.	
	<b>Examiner</b> /FRANKIE L. STINSON/	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 26-42 is/are pending in the application.  
4a) Of the above claim(s) 36-42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 28-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Newly submitted claims 35-42 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The apparatus as claimed can be practiced by another and materially different process, such as one not requiring the user selection

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35-42 stand withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by EPO'550 (European Patent Office 0 816 550).

Re claims 28, note the EPO'550 discloses drum type washing machine comprising:

a cabinet (2);

a tub (3) to hold water in the cabinet;

a drum (4) rotatably installed in the tub;

a driving motor installed in the cabinet to rotate the drum;

a vapor generator (9) installed in the cabinet to generate vapor;

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a circulation pump (as at 12, unnumbered, and see “recirculated” in the abstract and fig. 1) installed in the cabinet to circulate wash water drained from the tub;

a first connection hose (as at 7) connected to the vapor generator for supplying the vapor to the drum;

a second connection hose (unnumbered, see fig. 1) connected to the circulation pump for supplying the circulated water to the drum;

a drain pipe (unnumbered, see fig. 1) connected to the tub and the circulation pump; and

a nozzle (see “injecting” in the abstract) configured to inject the vapor or supply the circulated water to the drum from an upper side of the drum.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 29-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPO'550 in view of France et al. (U. S. Pat. No. 7,021,087).

Claims 29, 30 and 31, define over EPO'550 only in the recitation of the controller. Given that EPO'550 discloses a modern/contemporary day washing machine, it is the examiner's position the controller is inherent. Nonetheless, France is cited disclosing the controller (10) as claimed. It therefore would have been obvious to one having ordinary skill in the art to modify the arrangement of EPO'550, to include a controller, as taught by France, for the purpose of controlling the wash cycle without active human

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involvement. It is old and well known in the art to provide a programmable microprocessor in contemporary washing machines for producing an efficient and typical wash process. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. As for the specific sequence, the same is of little patentable weight; give the structure and controller as combined above. The particular steps function or method of operation of the controller is of little patentable weight given that the applied prior discloses all of the claimed structure; the device is clearly capable of functioning as claimed. It is the examiner's position that all that is required of the prior art is that the same be capable of, or having the ability of functioning as claimed, with the prior art not having to explicitly state the claimed steps, function or method of operation. It is also known that microcontroller/processors inherently have many possible control scenarios and that same is clearly capable of functioning/operating as claimed with the proper programming.

**In re Hutchison, 69 USPQ 138**

Functional limitation must be evaluated and considered. However, it must be determined whether the functional limitation provides a positive limitation or only the ability to perform the claimed function. If it is only the ability to perform the function, the language does not constitute a limitation in any patentable sense.

**MPEP 2173.05(g) Functional Limitations:**

A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In *re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step. >In *Innova /Pure Water Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1117-20, 72 USPQ2d 1001, 1006-08 (Fed. Cir. 2004), the court noted that the claim term “operatively connected” is “a general descriptive claim term frequently used in patent drafting to reflect a functional relationship between claimed components,” that is, the term “means the claimed components must be connected in a way to perform a designated function.” “In the absence of modifiers, general descriptive terms are typically construed as having their full meaning.” *Id.* at 1118, 72 USPQ2d at 1006. In the patent claim at issue, “subject to any clear and unmistakable disavowal of claim scope, the term ‘operatively connected’ takes the full breath of its ordinary meaning, i.e., said tube [is] operatively connected to said cap’ when the tube and cap are arranged in a manner capable of performing the function of filtering.” *Id.* at 1120, 72 USPQ2d at 1008.< Whether or not the functional limitation complies with 35 U.S.C. 112, second paragraph, is a different issue from whether the limitation is properly supported under 35 U.S.C. 112, first paragraph, or is distinguished over the prior art. A few examples are set forth below to illustrate situations where the issue of whether a functional limitation complies with 35 U.S.C. 112, second paragraph, was considered. It was held that the limitation used to define a radical on a chemical compound as “incapable of forming a dye with said oxidizing developing agent” although functional, was perfectly acceptable because it set definite boundaries on the patent protection

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sought. In re Barr, 444 F.2d 588, 170 USPQ 33 (CCPA 1971). In a claim that was directed to a kit of component parts capable of being assembled, the Court held that limitations such as “ members adapted to be positioned” and “ portions . . . being resiliently dilatable whereby said housing may be slidably positioned” serve to precisely define present structural attributes of interrelated component parts of the claimed assembly. In re Venezia, 530 F.2d 956, 189 USPQ 149 (CCPA 1976

## **MPEP 2114: APPARATUS AND ARTICLE CLAIMS—FUNCTIONAL LANGUAGE**

### **APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART**

>While features of an apparatus may be recited either structurally or functionally, claims<directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429,1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “ [A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

### **MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE APPARATUS CLAIM FROM THE PRIOR ART**

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A claim containing a “ recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim

1 recited that the apparatus was “ for mixing flowing developer material” and the body of the claim recited “ means for mixing ..., said mixing means being stationary and completely submerged in the developer material” . The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.). .

Re claims 32-35, note that EPO'550 disclose that heater/generator is operated “and/or” during wash, rinse or drying cycles. Also note France, col. 15, lines 11-21 where the user “selects the type of treatment”.

4. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson (U. S. Pat. No. 3,935,719) in view of either EPO'550 or Japan'995 (Japan 61-128995).

Re claim 28, Henderson is cited disclosing drum type washing machine comprising:

- a cabinet (see --incorporation by reference--, col. 1, lines 47-54);
- a tub to hold water in the cabinet;
- a drum rotatably installed in the tub;
- a driving motor installed in the cabinet to rotate the drum;
- a vapor source (44) to provide vapor;



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a circulation pump (38) to circulate wash water drained from the tub;

a first connection hose (unnumbered, see the fig) connected to the vapor source for supplying the vapor to the drum;

a second connection hose (unnumbered, see fig. 1) connected to the circulation pump for supplying the circulated water to the drum;

a drain pipe (46) connected to the tub and the circulation pump; and

a nozzle (22) configured to inject the vapor or supply the circulated water to the drum from an upper side of the drum that differs from the claim only in the recitation of the vapor generator and the generator being installed in the cabinet. EPO'550 and Japan'995 are each cited disclosing the arrangement of providing a cabinet where the cabinet houses a vapor generator and a pump. It therefore would have been obvious to one having ordinary skill in the art to modify the arrangement of Henderson, to include a cabinet as taught by either EPO'550 or Japan'995, for the purpose of enclosing all of the working components. It is old and well known to encase working components of machinery, to prevent injury to the user as required by some county, state and local codes. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

5. Claims 29-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 28 above, and further in view of France (U. S. Pat. No. 7,021,087).

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Claims 29, 30 and 32 define over the applied prior art only in the recitation of the controller. France is cited disclosing the controller (10) as claimed. It therefore would have been obvious to one having ordinary skill in the art to modify the arrangement of Henderson, to include a controller, would have been obvious to one having ordinary skill in the art for the purpose of control the wash cycle without active human involvement. It is old and well known in the art to provide a programmable microprocessor in contemporary washing machine for producing an efficient and typical wash process. As for the specific sequence, the same is of little patentable weight, given the structure and controller as combined above. The particular steps, function or method of operation of the controller is of little patentable weight given that the applied prior discloses all of the claimed structure, the device is clearly capable of functioning as claimed. It is the examiner's position that all that is required of the prior art is that the same be capable of, or having the ability of functioning as claimed, with the prior art not having to explicitly state the claimed steps, function or method of operation. It is also known that microcontroller/processors inherently have many possible control scenarios and that same is clearly capable of functioning/operating as claimed with the proper programming. Re claims 32-35, note that EPO'550 disclose that heater/generator is operated "and/or" during wash, rinse or drying cycles. Also note France, col. 15, lines 11-21 where the user "selects the type of treatment".

6. Applicant's arguments with respect to the pending claims and/or the rejection thereof have been considered. The arguments and/or amendments with respect to the

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claims have been effective in defining over previous Office Action, with the current remarks standing moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.